Supreme Court, U.S.
FILED
DEC 23 1994
OFFICE OF THE CLERK

(5)

No. 94-909

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

HUGO PRINCZ,
Petitioner,

v.

THE FEDERAL REPUBLIC OF GERMANY,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF OF PETITIONER

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8 pp

The Table of Contents has been omitted as superfluous.

TABLE OF AUTHORITIES

Page

CASES

Bernstein v. *Nederlandsche-Amerikaansche Stoomvart-Maatschappij*,
210 F.2d 375 (2d Cir. 1954) 3

The Nurnberg Trial,
6 F.R.D. 69 (1946) 3

Republic of Argentina v. *Weltover, Inc.*,
112 S. Ct. 2160 (1992) 5 n.5

Swint v. *City of Wadley, Alabama*,
5 F.3d 1435 (11th Cir. 1993),
on reh'g, 11 F.3d 1030 (11th Cir. 1994),
cert. granted sub. nom.
Swint v. *Chambers County Commission*,
114 S. Ct. 2671 (1994) (No. 94-1636) 5 n.5

OTHER AUTHORITIES

Convention on the Settlement of Matters Arising out of the War and the Occupation,
6 U.S.T. 5652, TIAS 3425
(23 October 1954) 5 n.4

Department of State Press Release No. 296
(April 27, 1949) 3

Department of State's Response to Note Verbale No. 22/93
(April 13, 1993) 3

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REPLY BRIEF OF PETITIONER

Rather than focusing on the certworthiness of the issues presented for review, Germany contends that certiorari should be denied because Mr. Princz seeks greater compensation than has been paid to other survivors — or because Mr. Princz somehow implies that his suffering was greater than that of other survivors — or because Mr. Princz insinuates that his U.S. citizenship entitles him to something extra — or because payment to Mr. Princz would be unfair to other survivors. These contentions are as inapposite to the legal arguments presented in the Petition for Certiorari as they are offensive.[1] Mr. Princz is not seeking anything more than he would have

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[1]Moreover, these contentions are based in large part on materials included in Respondent's Addendum, which is a *melange* of extra-record and of-record documents and correspondence postdating even the filing of the Petition for Certiorari herein.

received had he begun receiving payments in the 1950s, as did other survivors. He does not argue that his U.S. citizenship makes him more deserving; he simply argues that it should not make him ineligible for compensation.[2] Judge Wald appropriately characterized Germany's treatment of Mr. Princz' requests for reparations, stating that:

> For decades [following his liberation], using the available international compensation mechanisms, Princz sought unsuccessfully to obtain reparations from Germany for both the loss of his pension and the physical and mental suffering inflicted upon him during the war. Despite its public professions of penitence for the horrors of the Holocaust, however, Germany repeatedly relied on technicalities such as Princz' citizenship at the time of his enslavement to deny him either a pension or any restitution for his immense suffering. Ironically, had Princz not been an American

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[2]Germany admits that Mr. Princz' U.S. citizenship made him ineligible for reparations in 1953 when the program began, Br. Opp. 3-4, but argues that he would have been eligible for reparations under the 1965 amendment to the Program. Br. Opp. 5. Mr. Princz takes exception to the latter. The 1965 amendment did nothing more than reopen a small portion of the 1953 program to those who had previously been eligible but had failed to file. By Germany's own written admission, even if Mr. Princz had been eligible in 1965 and filed for reparations, he would only have received a one-time payment of DM 10-15000 [approx. $2000 - $3000]. R.Add. 17a.

Despite numerous requests by petitioner's counsel, Germany has never entered proof of foreign law into the record concerning this disputed question of fact. In any event, at this stage of the proceedings, the facts must be taken in a light most favorable to Mr. Princz. *See* Pet. App. C, 24a n.1 (Wald, J., dissenting, citing *Moore* v. *Agency for Int'l Dev't*, 994 F.2d 874, 875 (D.C. Cir. 1993)).

> citizen at the time of the Holocaust, he would have received compensation.

Pet. App. C., 25a (concurring with the District Court's finding of fact at Pet. App. G, 52a).

Germany, for a variety of reasons, argues that the United States implicitly supports its claim of sovereign immunity in this case. The facts do not bear this out. Germany sought the assistance of the Department of State at the appellate level in this case. The Department refused, and responded by admonishing Germany to settle Mr. Princz' "legitimate and compelling claim." United States Department of State's Response to Note Verbale No. 22/93 (April 13, 1993) (attached to Appellee's Brief below at p. 10 of the addendum).

The Department of State's refusal to assist Germany in this proceeding is consistent with past actions and pronouncements of the Executive Branch. When the Nuremberg War Crimes Tribunal was convened, the United States and the Allied Powers rejected claims of immunity by German state officials based upon the immunity of the state. *See generally The Nurnberg Trial*, 6 F.R.D. 69 (1946). When a U.S. Court of Appeals initially declined to exercise jurisdiction over a claim seeking the restitution of property expropriated by Germany under its religious persecution laws, the Department of State issued an opinion letter, which stated: "The policy of the Executive . . . is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials." Department of State Press Release No. 296 (April 27, 1949) (attached to Appellee's Brief below at pp. 12-14 of the addendum); *Bernstein* v. *N.V. Nederlandsche-Amerikaansche Stoomvart-Maatschappij*, 210 F.2d 375 (2d Cir. 1954) (per curiam).

Finally, Germany also argues that Mr. Princz is

currently eligible to receive a bridge payment of $3400 and a monthly pension of $340 commencing in August 1995. Br. Opp. 5-6. This "eligibility," however, simply reflects another instance of Germany's recalcitrance. Diplomatic entreaties on behalf of Mr. Princz made by the Department of State during the Reagan, Bush and Clinton Administrations have been rebuffed by the German government. This suit was commenced only after all then-available diplomatic remedies had been exhausted without Germany agreeing to give Mr. Princz reparations. It was not until the district court denied Germany's immunity that Germany directed its agent in the United States to deem Mr. Princz eligible for these *de minimis* benefits. The settlement offer was made not with the expectation that Mr. Princz would find it acceptable, but as a vehicle for creating an issue by which Germany could move the district court for reconsideration. Neither Mr. Princz nor the Department of State found Germany's settlement proposal worthy of serious consideration.[3]

This case is not about petitioner's supposed avarice. Rather, it is about the availability of a remedy of last resort when a foreign state deliberately inflicts injuries upon a United States citizen, in flagrant violation of the most fundamental norms of international law, and subsequently refuses to enter into negotiations with the United States government to arrange satisfactory compensation. Germany claims it cannot afford to single out Mr. Princz for treatment different from those

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[3]Germany also suggests that the American Jewish Community does not support Mr. Princz' views in this matter. Br. Opp. 4 (presenting list of Jewish organizations compiled from extra-record materials found at R.Add. 30a). This misleading impression is easily dispelled by the *amicus* brief submitted by the Anti-Defamation League of B'nai B'rith, the International Association of Jewish Lawyers and Jurists, and the National Jewish Community Relations Advisory Council (to the filing of which Germany has inexplicably refused its consent).

similarly situated. Br. Opp. 19-20. Yet, that is precisely what Germany has done for more than 40 years by refusing to give him the same reparations other survivors, who made timely application to the 1953 program, have received.[4]

Contrary to the position advanced in Germany's Brief in Opposition, the questions presented for review exist and are important.[5] This Court should issue a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit.

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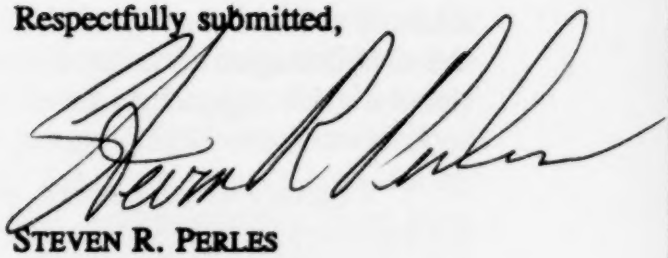
[4]Following the Second World War Germany was not recognized as a sovereign power. As a condition of the return of sovereignty, Germany made a commitment to administer its reparations programs on a nondiscriminatory basis. Convention on the Settlement of Matters Arising out of the War and the Occupation, Ch. 4, 6 U.S.T. 5652, 5665-6, TIAS 3425 (23 October 1954). Yet, Germany continues to discriminate against Mr. Princz based solely upon his U.S. citizenship.

[5]As in this case, the collateral order doctrine and the Foreign Sovereign Immunities Act have historically posed difficult questions which this Court has chosen to resolve. *See, e.g., Swint* v. *City of Wadley, Alabama*, 5 F.3d 1435 (11th Cir. 1993), *on reh'g*, 11 F.3d 1030 (11th Cir. 1994), *cert. granted sub nom. Swint* v. *Chambers County Commission*, 114 S. Ct. 2671 (1994) (No. 93-1636) (continuing problems concerning the scope of the collateral order doctrine); *Republic of Argentina* v. *Weltover, Inc.*, 112 S. Ct. 2160 (1992) (reversing fifteen years of lower court interpretations of the Foreign Sovereign Immunity Act commercial activity exception's "direct effect" requirement); *see also* Brief of Individual Professors of International Law as *Amici Curiae* Supporting Petitioner (discussing the importance of international law as a canon of statutory construction) (to the filing of which Germany has refused its consent).

Respectfully submitted,



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